

# HOUSE BILL No. 1333

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-13-12-12; IC 6-3-1-3.5; IC 6-3.1-29.

**Synopsis:** Economic development. Establishes the entrepreneurial loan guarantee review board. Authorizes the board to direct the board for depositories to enter into loan guarantees under certain conditions. Provides an income tax credit for capital losses realized from an investment in a qualified Indiana business.

**Effective:** July 1, 2004; January 1, 2005.

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January 15, 2004, read first time and referred to Committee on Appointments and Claims.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1333

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 5-13-12-12 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2004]: **Sec. 12. (a) As used in this section,**  
4 **"review board" refers to the entrepreneurial loan guarantee**  
5 **review board established by this section.**

6       **(b) The entrepreneurial loan guarantee review board is**  
7 **established. The governor, the treasurer of state, and the**  
8 **chairperson of the Indiana economic development corporation**  
9 **shall:**

10       **(1) each appoint an equal number of members to the review**  
11 **board; and**

12       **(2) determine the total number of members of the review**  
13 **board, which must be three (3), six (6), or nine (9).**

14       **(c) A person is not eligible to serve as a member of the review**  
15 **board unless the person:**

16       **(1) is a board member, an officer, or an employee of a**  
17 **financial institution (as defined in IC 5-13-4-10); or**

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(2) is a depositor in a financial institution (as defined in IC 5-13-4-10) who:

(A) has had an account with one (1) or more financial institutions for at least five (5) years before appointment to the review board; and

(B) maintains a balance of at least five thousand dollars (\$5,000) in an account with a financial institution during the person's service on the review board.

(d) The review board shall elect a chairperson and other officers the review board determines to be necessary.

(e) The term of office of each member of the review board coincides with the term of office of the official who appointed that member. A vacancy on the review board shall be filled for the unexpired term in the same manner as the original appointment.

(f) The members and officers of the review board are not entitled to any compensation for their services but are entitled to reimbursement for actual and necessary expenses on the same basis as state employees.

(g) A majority of the members appointed to the review board constitutes a quorum. The affirmative votes of a majority of the members appointed to the review board are required for the review board to take action on any measure.

(h) The review board may direct the board for depositories to enter into a loan guarantee if the review board determines that all the following conditions are met:

(1) Federal law has been amended to provide that deposits held by a financial institution (as defined in IC 5-13-4-10) are insured by the Federal Deposit Insurance Corporation.

(2) The loan guarantee will secure a loan that is to be used to provide working capital, equipment, or facilities (or any combination of these) for the establishment of a new business or the expansion of an existing business in Indiana.

(3) The borrower has been denied conventional financing by at least two (2) financial institutions.

(4) The loan guarantee creates a reasonable probability that Indiana's employment will be significantly expanded.

(5) The consequent expansion in employment will enhance the economic stability of the community or communities in Indiana where the borrower conducts its business.

(6) There is a reasonable probability that the loan will be repaid or satisfied, as evidenced by:

(A) the economic feasibility of the business as evidenced by

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- 1 the borrower's present and past financial situation and  
 2 business experience and the general reasonableness of the  
 3 business proposal and financial projections for the future;  
 4 (B) the credit histories of the borrower and any  
 5 guarantors;  
 6 (C) the sufficiency of the capital and other resources  
 7 available to the borrower to conduct the business as  
 8 planned, and the amount and source of equity contributed;  
 9 (D) the adequacy of the security offered for the loan;  
 10 (E) the extent to which the risk of financial loss is shared  
 11 by others; and  
 12 (F) the viability of the industry of which the business is a  
 13 part and the contribution of the business to that industry.  
 14 (7) The loan and the loan guarantee are protected against loss  
 15 and the borrower has agreed to pay the insurance fund a  
 16 guarantee premium annually as provided in subdivision (11).  
 17 (8) Protection against loss on the loan that is guaranteed will  
 18 be provided by:  
 19 (A) a valid security agreement;  
 20 (B) a mortgage;  
 21 (C) a combination of the methods described in clauses (A)  
 22 and (B); or  
 23 (D) another document.  
 24 (9) The term of the loan guarantee does not exceed twenty (20)  
 25 years.  
 26 (10) The amount of the loan guarantee does not exceed:  
 27 (A) the lesser of:  
 28 (i) ninety percent (90%) of the unpaid balance of the  
 29 obligation; or  
 30 (ii) ninety percent (90%) of the appraised fair market  
 31 value of the real estate;  
 32 if the obligation is backed by real estate;  
 33 (B) the lesser of:  
 34 (i) seventy-five percent (75%) of the unpaid balance of  
 35 the obligation; or  
 36 (ii) seventy-five percent (75%) of the appraised fair  
 37 market value of the equipment;  
 38 if the obligation is backed by equipment;  
 39 (C) a weighted average of the figures derived under clauses  
 40 (A)(ii) and (B)(ii) if the obligation is backed by real estate  
 41 and equipment; or  
 42 (D) an amount determined by the review board, in the case

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of an obligation not described in clause (A), (B), or (C).

(11) The guarantee premium to be received by the public deposit insurance fund for the guarantee must be at an annual percentage rate on the outstanding principal amount of the loan of not less, in the discretion of the review board, than the market rate for guarantees, mortgage insurance rates, or letters of credit used for similar purposes at the time the guarantee is made. However, the annual percentage rate must not exceed two percent (2%) of the outstanding principal obligation.

(i) If the review board directs the board for depositories to enter into a loan guarantee under this section, the board for depositories shall enter into a loan guarantee under the terms and conditions approved by the review board.

(j) Any claim, loss, or debt arising out of any guarantee authorized by this section is the obligation of the board for depositories payable out of the public deposit insurance fund only and does not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state. The document evidencing any guarantee must have on its face the words, "The obligations created by this guarantee (or other document as appropriate) do not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state but are obligations of the board for depositories and are payable solely out of the public deposit insurance fund, and neither the faith and credit nor the taxing power of the state is pledged to the payment of any obligation hereunder."

(k) Any claim of loss by a lender or lessor under a guarantee authorized under this section, at the time it is made in writing to the board for depositories, has priority against the public deposit insurance fund on all claims made after that time.

SECTION 2. IC 6-3-1-3.5, AS AMENDED BY P.L.1-2004, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code

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for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000).

(4) Subtract one thousand dollars (\$1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) one thousand five hundred dollars (\$1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996; and

(B) five hundred dollars (\$500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars (\$40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:

(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or

(B) two thousand dollars (\$2,000).

(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction

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from adjusted gross income.

(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint returns if the taxable year began before January 1, 1987.

(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code if the taxable year began before January 1, 1985.

(12) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(15) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(16) For taxable years beginning after December 31, 1999, subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.

(17) Subtract an amount equal to the lesser of:

(A) for a taxable year:

(i) including any part of 2004, the amount determined under subsection (f); and

(ii) beginning after December 31, 2004, two thousand five hundred dollars (\$2,500); or

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(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(18) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(19) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

**(20) Add the amount of losses claimed as a credit against state tax liability under IC 6-3.1-29 in the taxable year.**

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

**(6) Add the amount of losses claimed as a credit against state tax liability under IC 6-3.1-29 in the taxable year.**

(c) In the case of life insurance companies (as defined in Section

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816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

**(6) Add the amount of losses claimed as a credit against state tax liability under IC 6-3.1-29 in the taxable year.**

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an

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earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

**(6) Add the amount of losses claimed as a credit against state tax liability under IC 6-3.1-29 in the taxable year.**

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

**(4) Add the amount of losses claimed as a credit against state tax liability under IC 6-3.1-29 in the taxable year.**

(f) This subsection applies only to the extent that an individual paid property taxes in 2004 that were imposed for the March 1, 2002, assessment date or the January 15, 2003, assessment date. The maximum amount of the deduction under subsection (a)(17) is equal to the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the amount of property taxes that the taxpayer paid after December 31, 2003, in the taxable year for property taxes imposed for the March 1, 2002, assessment date and the January 15, 2003, assessment date.

STEP TWO: Determine the amount of property taxes that the taxpayer paid in the taxable year for the March 1, 2003, assessment date and the January 15, 2004, assessment date.

STEP THREE: Determine the result of the STEP ONE amount divided by the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE amount by two

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thousand five hundred dollars (\$2,500).

STEP FIVE: Determine the sum of the STEP THREE amount and two thousand five hundred dollars (\$2,500).

SECTION 3. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]:

**Chapter 29. Qualified Indiana Business Investment Loss Tax Credit**

**Sec. 1. As used in this chapter, "pass through entity" means:**

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

**Sec. 2. As used in this chapter, "qualified Indiana business" means an independently owned and operated business that is certified as a qualified Indiana business by the department of commerce under IC 6-3.1-24-7.**

**Sec. 3. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:**

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 6-5.5 (the financial institutions tax); and
- (3) IC 27-1-18-2 (the insurance premiums tax);

**as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.**

**Sec. 4. As used in this chapter, "taxpayer" means an individual or entity, including a pass through entity, that has any state tax liability.**

**Sec. 5. A taxpayer that realizes a capital loss on the taxpayer's investment in a qualified Indiana business is entitled to a credit against the person's state tax liability in a taxable year equal to the amount specified in section 6 of this chapter.**

**Sec. 6. The amount of the credit to which a taxpayer is entitled under section 5 of this chapter equals the product of:**

- (1) twenty percent (20%); multiplied by
- (2) the amount of the capital losses realized on an investment in a qualified Indiana business in the taxable year.

**Sec. 7. If a pass through entity is entitled to a credit under section 6 of this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit against**

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the shareholder, partner, or member's state tax liability equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

**Sec. 8.** If the amount of the credit determined under section 6 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the taxpayer's following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback or a refund of any unused credit amount.

**Sec. 9.** To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department, along with the taxpayer's state tax return or returns, all information that the department determines is necessary for the calculation of the credit provided by this chapter.

**SECTION 4.** [EFFECTIVE JANUARY 1, 2005] (a) IC 6-3-1-3.5, as amended by this act, applies to taxable years beginning after December 31, 2004.

(b) IC 6-3.1-29, as added by this act, applies to taxable years beginning after December 31, 2004.

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